

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

MAR 30 1993

Employer Identification Number: [REDACTED]

Form: 1120

Tax Years: all

Dear Applicant:

This is a final adverse ruling as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

This ruling is made for the following reason(s):

You have not established that you will be operated exclusively for charitable, scientific, or educational purposes. You have not established that you will not operate for private benefit, or that no part of your net earnings will inure to the benefit of any private individual, or that you will serve a public rather than a private purpose.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the date of this letter, unless a request for an extension of time is granted. Returns for later tax years should be filed with the appropriate service center as indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Processing of income tax returns and assessment of any

taxes due will not be delayed because a declaratory judgment suit has been filed under section 7428.

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown above.

Sincerely,

(signed) [REDACTED]
[REDACTED]

Director, Exempt Organizations
Technical Division

cc: [REDACTED]

Attn: EO Group

[REDACTED]
[REDACTED]
3-25-93

[REDACTED]
3-25-93

[REDACTED]
3-26-93

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

MAY 19 1992

Employer Identification Number: [REDACTED]
Key District: Baltimore

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. For the reasons stated below, we conclude that you do not qualify for tax exemption under this section.

You were incorporated on [REDACTED], under the Nonprofit Corporation Law of the State of [REDACTED]. Your articles of incorporation state that you were formed exclusively for charitable, educational and scientific purposes. You shall perform and provide (1) socio-economic, management, financial and investment research works and advisory services; (2) accounting, auditing, and tax research works and services, with emphasis on institutional growth and development, especially of small and medium enterprises; (3) educational and training research works and services for leadership growth and for institutional developments; and (4) related and supporting research works and services. Your articles state that you may also engage in other professional activities that are lawful for a professional corporation organized under the non-profit corporation law of the State of [REDACTED].

Article [REDACTED] of your articles of incorporation provides for the issuance of [REDACTED] shares of common stock, par value one dollar per share, all of one class, and having an aggregate par value of [REDACTED] thousand dollars. Some of these shares will be issued to your permanent associates in accordance with a policy directive to be issued in [REDACTED] by your executive board.

In response to Part II, question 1 of Form 1023, Application for Recognition of Exemption, you state that your activities have consisted of writing policy research proposals for [REDACTED] nations. In furtherance of your objectives, you will engage in a

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

[REDACTED]

Section 1.501(c)(3)-1(b)(1) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that an organization is not organized and operated exclusively for one or more of the exempt purposes specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities, if the operation of the trade or business is in furtherance of the organization's exempt purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513.

Section 513(a) of the Code defines the term "unrelated trade or business," as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purposes or function forming the basis for its exemption under section 501.

The Tax Court held, in B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), that an organization whose primary purpose was to offer consulting services for a fee to non-profit organizations was not operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. The B.S.W. Group, Inc. was formed for the purpose of providing consulting services primarily in the area of rural-related policy and program development. An important goal of B.S.W. Group, Inc. was to improve client's understanding of governmental policy processes and methods for becoming more effective in their work

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through public and private funding. B.S.W. Group, Inc.'s activities included direct consulting services, seminars, and research on related topics. The fees charged were set at or close to cost; however, the client's ability to pay was also taken into consideration. The Tax Court stated that B.S.W. Group, Inc.'s primary purpose was to operate a commercial business producing a profit since its services were in competition with commercial businesses.

The Supreme Court of the United States, in Better Business Bureau v. United States, 326 U.S. 279 (1945), held that if the nonexempt activities of the organization are more than incidental or insubstantial, the organization is not entitled to exemption under section 501(c)(3) of the Code, regardless of the number or importance of its exempt purposes.

Section 5.01 of Rev. Proc. 90-27, 1990-1 C.B. 514, provides that a determination letter will be issued to an organization only when its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Section 5.02 of Rev. Proc. 90-27 provides that exempt status will be recognized in advance of operations only when the proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. The information contained in your application and supporting documents fails to describe your operations with sufficient particularity so as to establish that you meet the requirements for exemption under section 501(c)(3) of the Code.

In your application, you state that all non-profit activities will be performed by you and all profit-making professional services will be provided by ██████████. Although you state that this is not the case in your letter dated ██████████, you indicate that ██████████ will be performing services for you once its objectives become more clear. The actual scope and type of services to be provided by ██████████, a for-profit organization which is related to you, has not been adequately described.

The arguments given in your letter of ██████████, as to how you differ from commercial consulting firms, are unpersuasive. Although some of your activities may be appropriate for an organization described in section 501(c)(3) of the Code, several of your objectives listed in your articles and in your application for recognition of exemption, specifically your socio-economic, management, financial and investment

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research works and advisory services, your accounting, auditing, and tax research works and services, your educational and training research works and services, and your related and supporting research works and services, are routinely performed by commercial consulting firms. The fact that you have no equity holders to which you may distribute profits is not sufficient to distinguish your activities, the provision of consulting-type services to exempt and non-exempt entities, from the services offered by a commercial firm. As such, you are similar to the organization in B.S.W. Group, Inc. v. Commissioner, supra, whose exemption was denied by the Tax Court.

You have not distinguished your activities from those ordinarily carried on by commercial consulting businesses organized for profit. Therefore, like the organization in B.S.W. Group, Inc., supra, you are not organized and operated primarily for educational or charitable purposes, but are organized and operated to conduct an ordinary commercial consulting enterprise in competition with other firms. The consulting activities are not substantially related to any exempt purpose and, therefore, constitute an unrelated trade or business within the meaning of section 513(a) of the Code. Since you are primarily engaged in the conduct of an unrelated trade or business, section 1.501(c)(3)-1(e)(1) of the regulations provides that you may not be recognized as exempt under section 501(c)(3) of the Code. See also Better Business Bureau v. United States, supra.

Additionally, you have not demonstrated that your activities will not serve the private interests of ██████████ or the ██████████ more than incidentally. Neither the descriptions of your activities nor the relationship between you and the ██████████ has been adequately described to determine the amount of private benefit flowing to such parties. Likewise, the financial information submitted by you is insufficient upon which to arrive at a favorable conclusion. Because the information contained in your application and supporting documents fails to describe your operations with sufficient particularity so as to establish whether you meet the requirements for exemption under section 501(c)(3) of the Code, you may not be recognized as exempt under such section. See Rev. Proc. 90-27, supra. Furthermore, since you have not demonstrated that your activities will not serve the private interests of the ██████████ or ██████████, within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations, you may not be recognized as exempt under section 501(c)(3).

Finally, your articles of incorporation empower you to engage in certain activities that are beyond the scope of section 501(c)(3) of the Code. Specifically, your articles allow you to

[REDACTED]

engage in accounting, auditing, and tax research works and services as well as socio-economic, management, financial and investment research works and advisory services. Such activities are not charitable or educational within the meaning of section 1.501(c)(3)-1(d) of the regulations. Since your articles of organization do not limit the purposes of your organization to one or more exempt purposes and, in fact, expressly empower you to engage in activities which are not in furtherance of one or more exempt purposes, you are not organized exclusively for exempt purposes within the meaning of section 1.501(c)(3)-1(b)(1). Additionally, the provision in your articles concerning the issuance of common stock, pursuant to a policy directive to be issued in 1994, is not sufficiently described in your articles or subsequent correspondence so as to allow us to make a determination that you are organized exclusively for exempt purposes. Since you are not organized exclusively for exempt purposes, you may not be recognized as exempt under section 501(c)(3) of the Code.

Based on the foregoing, we hold that you do not qualify for exemption from federal income tax as an organization described in section 501(c)(3) of the Code. Therefore, contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns on Form 1120.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days from today and must be signed by one of your principal officers. When sending a protest or other correspondence with respect to this case, you will expedite its receipt by placing the following symbols on the envelope:

[REDACTED]. These symbols do not refer to your case, but rather to its location.

You also have the right to a conference in this office after your protest statement is submitted. If you desire a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that, a declaratory judgment or decree under this section shall not be issued in any proceedings unless the United States Tax Court, the United States

[REDACTED]

District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the District Director, Baltimore, Maryland, which is your key district for exempt organization matters. Thereafter, any questions about your federal income tax status should be addressed to your District Director. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

(signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

cc: [REDACTED]

Attn: EO Group

[REDACTED] 05/14/92

[REDACTED] 8/14/92